17-629

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~1030.~~ ~~688~~ ~~382~~ 136

HIRAM BARNEY, LATE COLLECTOR, &c., PLAINTIFF IN ERROR,

vs.

ARNOLD FRIEDMAN, SURVIVING PARTNER OF STRAHLEHEIM & CO.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED DECEMBER 2, 1878.

SUPREME COURT OF THE UNITED STATES.

No. 1030.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the southern district of New York, greeting:

Because in the records and proceedings, and also in the rendition of the judgment of a plea which is in the said circuit court before you, between Arnold Friedman, surviving partner of Strahlehein & Co., plaintiffs, and Hiram Barney, defendant, a manifest error hath happened, to the great damage of the said Hiram Barney as by his complaint appears: We being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done the party aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the second Monday of October, eighteen hundred and seventy-eight, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done thereon, to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the 25 day of July, in the year of our Lord one thousand eight hundred and seventy-eight.

JOHN I. DAVENPORT, *Clerk.*

The foregoing writ is hereby allowed.

SAML. BLATCHFORD.

2 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John I. Davenport, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, by virtue of the foregoing writ of error, and in obedience thereto, do hereby certify that the following pages, numbered from three to thirty-one, inclusive, contains a true and complete transcript of the record and proceedings had in said court in the case of Hiram Barney, plaintiff in error, against Arnold Friedman, surviving partner of Strahleheim & Co., defendants in error, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this third day of October, in the year of our Lord one thousand eight hundred and seventy-eight, and of the Independence of the said United States the one hundred and third.

[SEAL.] JOHN I. DAVENPORT, *Clerk.*

(Indorsed:) U. S. Supreme Court. Hiram Barney, plaintiff in error, against Arnold Friedman, surviving partner of S. S. Strahleheim, defendant in error. Writ of error. Stewart L. Woodford, att'y for pl'ff in error.

I hereby admit due service of a copy of the within.

ALMON W. GRISWOLD,
Att'y for Def't in Error.

JULY 26TH, 1878.

REC. 1030—1

3 U. S. circuit court.

A. FRIEDMANN, SURVIVING PARTNER, &C., }
vs.
HIRAM BARNEY. }

SOUTHERN DISTRICT OF NEW YORK, *ss:*

The above-named plaintiffs come here into court, and, by A. W. Griswold, their attorney, suggest and give the court now here to understand and be informed that heretofore, to wit, on the 17th day of April, 1868, last past, an action was commenced in the superior court of the city of New York, according to the laws of the State of New York and the rules and practice of said court in such case made and provided, in favor and in the name of the said plaintiffs, against the defendant herein, upon and for the same cause of action hereinafter set forth, and the summons therein was filed in the clerk's office of the said superior court.

That the defendant afterwards, by his attorney, duly appeared
4 in said action, and such proceedings were thereupon had that afterwards, and on the 5th day of May, in the year of our Lord one thousand eight hundred and sixty-eight, the said action was in due form of law removed by writ of certiorari, for further prosecution and trial, into this court, according to the act of Congress in such case made and provided; and the clerk of the said superior court did thereupon return the said writ with the summons aforesaid, and did file the same in this court, according to the course and practice of this court; which allegations and suggestions the defendant does not deny, but admits the same to be true.

Wherefore let the further proceedings and trial in this action against the defendant be continued in this court.

And the plaintiffs accordingly, by their attorney aforesaid, complain of the defendant herein in a plea of trespass on the case.

5 For that whereas the said defendant, on the 17th day of April, one thousand eight hundred and sixty-eight, at the city of New York, in the southern district aforesaid, was indebted to the plaintiff in the sum of two thousand dollars, lawful money of the United States of America, for money before that time lent and advanced by the said plaintiffs to the said defendant, and at the special instance and request of said defendant; and for other money by the said plaintiffs before that time paid, laid out, and extended for the said defendant, and at the request of the said defendant; and for other money by the said defendant before that time had and received to and for the use of the said plaintiffs; and, being so indebted, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiffs, well and truly to pay unto the said plaintiffs the said sum of money in this count mentioned, when the defendant should be thereunto afterwards requested.

6 And whereas, also, the said defendant afterwards, to wit, on the same day and year, and at the place aforesaid, accounted together with the said plaintiffs of and concerning divers other sums of money before that time due and owing from the said defendant to the said plaintiffs, and then and there being in arrear and unpaid. And upon such accounting the said defendant then and there was found to be in arrear and indebted to the said plaintiffs in the further sum of two thousand dollars of lawful money as aforesaid; and being so found in arrear and indebted to the said plaintiffs, the said defendant, in the

consideration thereof, afterwards, to wit, on the same day and year, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiffs, well and truly to pay unto the said plaintiffs the said sum of money last mentioned, when the said defendant should be thereunto afterwards requested.

Nevertheless the said defendant (although often requested, &c.) has not yet paid the said several sums of money above mentioned, or
7 any or either of them, or any part thereof, to the said plaintiffs, but to pay the same or any part thereof to the said plaintiffs the said defendant has hitherto wholly refused, and still does refuse, to the damage of the said plaintiff of two thousand dollars; and thereof the plaintiffs bring suit, &c.

A. W. GRISWOLD,
Attorney for Plaintiffs.

And the said defendant, by the U. S. dist. att'y, his attorney, comes and defends the wrong and injury, &c., and says that he did not undertake and promise, in manner and form as the said plaintiffs have above thereof declared against him, and of this he puts himself upon the country, &c. And the said parties having stipulated in writing to refer the issue to the Hon. John I. Davenport as referee, and the said referee having heard the respective parties and made his report, filed February 20th, 1877, in the office of the clerk of this court, by which he found in favor of the plaintiffs for the sum of one thousand and twenty-one & $\frac{81}{100}$ dollars, paid as and for duties, as at February 15th, 1877; and the said parties having stipulated in writing to waive trial by jury and to submit the case to be passed upon by the court without a jury,
8 and the case having been accordingly submitted to the Honorable Samuel Blatchford, district judge, he, on the 21st day of February, 1877, did find for the plaintiffs in the sum of three hundred and ninety-eight & $\frac{45}{100}$ dollars in gold and silver coin, and six hundred and twenty-three & $\frac{86}{100}$ dollars in currency, as and for duties overpaid on charges and commissions as of February 15th, 1877, over and above their costs and charges by them in their behalf expended; and for those costs and charges, now here adjudged, the sum of ninety-three & $\frac{25}{100}$ dollars. Therefore, it is considered that the said plaintiffs recover against said defendant their damages and costs aforesaid, amounting in the aggregate to the sum of eleven hundred and fifteen & $\frac{06}{100}$ dollars.

Judgment signed this 23 day of Feb'y, 1877.

J. M. DEUELL, *Dep. Clerk.*

1,021	81
93	25
$1,115	06
398	45 Coin.
716	61 Currency.
1,115	06

9 (Endorsed:) U. S. circuit court. A. Friedman, surviving partner, &c., vs. Hiram Barney. Judgment roll. A. W. Griswold, pl'ffs' att'y. Filed Feb'y 23, 1877. Ex'dy.

10 Circuit court of the United States, southern district of New York.

F. Berely *vs.* Augustus Schell.
Same *vs.* Hiram Barney.
E. Blackman & al. *vs.* Same.
Thomas N. Dale & al. *vs.* Same.
A. H. Hildick *vs.* Same.
James Isler & al. *vs.* Same.
E. Kaupe & al. *vs.* Hiram Barney.
C. Le Boutillier & al. *vs.* Same.
A. Rolker & al. *vs.* Same.
Joseph Rosenthal & al. *vs.* Same.
T. Schudardt & al. *vs.* Same.
F. Tomes & al. *vs.* Same.
A. S. Aruson & al. *vs.* Same.
A. Friedman *vs.* Hiram Barney.
11 T. B. Merrick & al. *vs.* Same.
E. A. Oelrichs & al. *vs.* Same.
C. F. Van Blankensteyn & al. *vs.* Same.
A. W. Waterbury & al. *vs.* Same.
John Syz & al. *vs.* Augustus Schell.
J. S. Holden *vs.* H. J. Redfield.
T. Dehon *vs.* H. J. Redfield.
J. H. Abeel & al. *vs.* Same.
L. J. Levy & al. *vs.* Same.
Joseph Ellison *vs.* Same.
Wm. H. Horstman *vs.* Same.
J. W. Schmidt & al. *vs.* Same.
Thomas N. Dale & al. *vs.* Same.
M. S. Whitney *vs.* H. J. Redfield.
Stephen R. Lesher & al. *vs.* Augustus Schell.
E. C. Litchfield *vs.* H. J. Redfield.
12 John W. Schmidt & al. *vs.* Augustus Schell.
J. S. Holden *vs.* Same.
J. S. Holdane & al. *vs.* Same.
T. Dehon *vs.* Same.
Samuel Cochrane & al. vs. Augustus Schell.
Thomas N. Dale & al. *vs.* Same.
Joseph Ellison *vs.* Same.
J. H. Abeel & al. *vs.* Same.
J. Gourd & al. *vs.* Same.
L. A. Freund & al. *vs.* Same.
E. C. Litchfield *vs.* Same.
M. S. Whitney *vs.* Augustus Schell.
D. S. Arnold & al. *vs.* Same.
N. Asiel & al. *vs.* Same.

R. Foulds, jr. *vs.* Same.
W. Fuller & al. *vs.* Same.
13 L. E. Amsinck & al. *vs.* Same.
J. S. Burgess & al. *vs.* Same.
C. Angrave *vs.* Augustus Schell.
Edward Armstrong & al. *vs.* Same.
B. F. Babcock & al. *vs.* Same.
H. A. Smythe & al. *vs.* Same.
Geo. T. W. Bartels & al. *vs.* Same,
Edward Bech & al. *vs.* Same.
Geo. F. Bechtel *vs.* Same.
James M. Beebe & al. *vs.* Augustus Schell.
B. A. Mumford & al. *vs.* Same.
G. Wolfers & al. vs. Same.
H. D. Henschen & al. *vs.* Same.
James Houldsworth & al. *vs.* Same.
F. Duysters *vs.* Same.
Earl Douglas & al. *vs.* Same.
14 T. F. Noble *vs.* Augustus Schell.
Geo. L. Newell & al. *vs.* Same.
L. C. Austin & al. *vs.* Same.
Robert Spedding & al. *vs.* Same.
L. Sampson & al. *vs.* Same.
A. Scheitlin & al. *vs.* Same.
D. S. Schauck & al. *vs.* Same.
Henry A. Smythe & al. *vs.* Augustus Schell.
William Thompson & al. *vs.* Same.
John Trippett & al. *vs.* Same.
M. Thalminger & al. *vs.* Same.
D. A. Lindsay & al. *vs.* Same.
Charles Carville *vs.* Same.
W. S. Toole & al. *vs.* Same.
W. D. Cromwell & al. *vs.* Augustus Schell.
C. R. Cargill & al. *vs.* Same.
15 W. T. Crow & al. *vs.* Same.
H. G. Ely & al. *vs.* Same.
J. Cheney & al. *vs.* Same.
H. Herman & al. *vs.* Same.
L. D. Senat & al. *vs.* Same.
M. H. Swift & al. *vs.* Same.
John Vogt & al. *vs.* Same.
W. S. Wilson & al. *vs.* Same.
William Moser *vs.* Same.
J. C. Morlot & al. *vs.* Same.
T. Le Boutillier & al. *vs.* Same.
S. M. Peyser *vs.* Same.

C. F. Van Blankensteyn & al. *vs.* Same.
W. H. Horstemann & al. *vs.* Hiram Barney.
M. Maas *vs.* Same.
A. Perier & al. *vs.* Same.
16 H. Pastor & al. *vs.* Same.
F. M. Mass & al. *vs.* Same.
O. Priolss *vs.* Same.
E. B. Strange & al. *vs.* Hiram Barney.
John Bottomly *vs.* Same.
A. Batzer *vs.* Augustus Schell.
A. Rolker & al. *vs.* Same.
George B. Sheldon *vs.* Hiram Barney.
J. M. Pendleton *vs.* Same.
E. B. Strange & al. *vs.* Same.
F. M. Peyser *vs.* Hiram Barney.

17 Upon the orders heretofore made herein referring these actions to Edwards Pierrepont, esq., and upon reading and filing the affidavit of George Bliss, esq., and the stipulation on behalf of the respective parties to the above-entitled actions now pending in this court to recover duties alleged to have been illegally exacted upon charges and commissions, it appearing to the court that the assessment of the damages in each of the several cases will require the examination of long accounts and of numerous invoices, entries, and other documents and papers, and the taking of the testimony of various witnesses touching the same:

Now, on motion of George Bliss, esq., counsel for the said several defendants, and Almon W. Griswold and E. Delafield Smith, esqs., of counsel for the said several plaintiffs, appearing and not objecting thereto, it is ordered by the said court now here that the orders heretofore made, referring the said several causes to Edwards Pierrepont, esq., be, and they are hereby, vacated and set aside, and the said causes
18 *causes* are hereby referred to John I. Davenport, esq., as the sole referee, to take proofs of and ascertain the claim of the plaintiff or plaintiffs in each of the said several causes, with interest for excess of duties upon such charges and commissions which may be found to have been illegally exacted from plaintiffs and paid under protest to defendants and not barred by the statute of limitations, whenever the same has been pleaded, upon importations at the port of New York specified in the several bills of particulars served or to be served in said several causes.

The said referee shall proceed to determine and adjust the claims of the said several plaintiffs in accordance with the rules and decisions of this court in similar cases, so far as the same shall be found applicable to the said causes herein above named.

And it is further ordered that said referee state and report the amounts ascertained by him on said several commissions and charges separately, and the facts found by him in respect thereto, and in
19 respect to the protests touching the same.

The said referee shall give notice to the attorneys of the respective parties of the time and place of hearing therein, unless such notice shall be waived by said attorneys, and either party may, on the hearing before said referee, raise objections and exceptions, and the re-

feree shall decide thereon, and either party may bring such objections and exceptions to a hearing before the court after the report of such referee shall be filed, and for that purpose may require the referee to report the evidence or testimony taken in the case upon which the objection or exception arises, in such manner as the court shall direct, and copies of the protests filed therein respectively. That said referee shall report on such cases with all convenient despatch, and on the coming in of such report and the decisions of such exceptions as may be taken thereto by either party, either party shall be at liberty to move for judgment or verdict for the amount, as to the court shall seem meet.

20 And it is further ordered that the compensation of said referee shall be determined by the court after the coming in of his said report at such amount as shall appear to such court to be just and proper.

Dated Decr. 19, 1876.

(Signed) SAML. BLATCHFORD.

U. S. circuit court.

F. BERLEY
vs.
AUGUSTUS SCHELL AND 104 CASES AGAINST
against late collectors of this port.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

George Bliss, being sworn, says that these actions were heretofore referred to Hon. Edwards Pierrepont; that on the appointment of Mr. Pierrepont as attorney-general that gentleman notified deponent that he could not further serve as such referee, and requested that the order referring the cases to him might be vacated and the same referred to some one else; that deponent promised to procure the making of such an order, but that before he had time to carry out his promise the Secretary of the Treasury stopped all proceedings in this class of actions by directing that the questions involved should be presented to the Supreme Court of the United States; that within a few weeks this direction has been revoked, and deponent has been directed to proceed with the disposition of this class of cases. To that end it is important that a new referee in these cases should be appointed.

21

(Signed) GEORGE BLISS.

Sworn to before me this 15th Decr., 1876.

J. M. DEUEL,
U. S. Com'r S. D. of N. Y.

22 United States circuit court, southern district of New York.

It is stipulated and agreed that the order hereto annexed be entered by and with the consent and direction of the court in each of the above-entitled causes (one hundred and five in all), and that upon the entry of such order the said several causes stand referred to John I. Davenport, esq., for the purposes and in the manner specified in said order.

Dated Dec. 18, 1876.

GEORGE BLISS,
U. S. Attorney, Attorney for Defendants in each of said causes.
ALMON W. GRISWOLD,
Attorney for Plaintiffs in certain of said causes.
E. DELAFIELD SMITH,
Attorney for Plaintiffs in certain of said causes.

A. FRIEDMANN, SURVIVOR, &C., *vs.* HIRAM BARNEY. } And three other cases.

On reading and filing notice of motion herein, with admission of service and affidavit of Frederick W. Brooks, esq., and after hearing Stewart L. Woodford, esq., U. S. district attorney, in support of the motion, and A. W. Griswold, esq., of counsel for plaintiffs, in opposition thereto, it is ordered that certificates be entered in each of the four above-entitled actions; that the money for which the judgments were recovered herein was exacted by the defendants herein, or was paid to them, and was by them paid into the Treasury in the performance of their official duty as collectors of the port of New York; and that they acted under the directions of the Secretary of the Treasury.

And it is further ordered that said certificates be entered nunc pro tunc as of the days when the said judgments were severally recorded.

29 And it is further ordered that the executions heretofore issued against the property of the defendants herein be stayed and set aside.

(Signed) SAML. BLATCHFORD.

(Endorsed:) U. S. circuit court, south. dist. of N. Y. A. Friedmann, survivor, &c., vs. Hiram Barney, & 3 other causes. Order setting aside executions, &c. A. W. Griswold, pl'ff's att'y; S. L. Woodford, d'f't's att'y. U. S. circuit court, Sept. 13, 1877. John I. Davenport, clerk.

30 UNITED STATES OF AMERICA, *ss:*

To Arnold Friedman, surviving partner of S. Strahleheim & Co., and his attorney, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October, eighteen hundred and seventy-eight, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein Hiram Barney is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Dated July 25, 1878.

SAML. BLATCHFORD.

31 Due service of a copy of the within citation is hereby admitted.
New York, July, 26th, 1878.

ALMON W. GRISWOLD,
Attorney for Defendants in Error.

(Indorsed:) C. & C., 736. N. S. 406. U. S. Supreme Court. Hiram Barney, plaintiff in error, against Arnold Friedman, surviving partner of S. Strahleheim & Co., defendant in error. Citation. Stewart L. Woodford. att'y for pl'ff in error. Original citation & writ of error, filed July 27, '78. P.

(Indorsement on cover:) No. 1030. Hiram Barney, late collector, &c., plaintiff in error, vs. Arnold Friedman, surviving partner of Strahleheim & Co. S. New York C. C. U. S. Filed 2d December, 1878.